Information Sheet on Proposed Ordinance and Related Topics

What is the proposal?

The proposed Ordinance would remove the current requirement that the total of the "combined setback areas" (that is, open space) for houses (main buildings) must be at least 82% of the entire lot area; it would substitute language setting the maximum percentage of lot area that can be covered by a main building at 18%. The Ordinance also specifies that structures above the ground and attached to the main building, such as chimneys, porches, decks and the like, are included in the calculation of lot coverage.

OK, but I'm still not sure what it means.

Since 1992 the requirement in Garrett Park has been that construction on a house must leave at least 82% of the land on a lot *open*. The proposed Ordinance requires the same thing by saying that the house can *cover* no more than 18% of the lot.

Would it change what I can build on my lot?

No, not by a bit. The proposed Ordinance has the same effect as the current standard. The proposed Ordinance uses different language (that is, a maximum "lot area coverage" instead of "minimum combined setback"); the maximum lot coverage of 18% is the reciprocal of the current requirement of 82% "minimum combined setback." The standards are identical in their effect.

If the standard is the same, why change the law at all?

The current formulation of "minimum combined setback" has been questioned in court in a way that can be readily resolved by using authority recently given to the Town by the State. If no change is made in the setback provision and there is a court finding that this portion of the law is invalid, the Town could lose the open space protection provided by this provision.

When the current Garrett Park ordinance (law) was passed in 1992, the Town had more limited zoning authority and could only regulate setbacks. To preserve open space on a lot, the "minimum combined setback" requirement was passed. (See more detailed discussion below.) In 2006 the Town was granted broader authority by the State of Maryland, including the express authority to regulate lot area coverage. The Town has been asked by the judge to brief and argue the issue of the relationship of "minimum combined setback" and lot coverage, as well as the Town's authority in adopting the minimum combined setback. By adopting the lot coverage language under current authority, the Town can both insure the viability of the law and potentially avoid substantial legal fees associated with researching, briefing and arguing the issue

before the court. (Also see the discussion below about the relationship of the proposed ordinance to the current litigation.)

What is the additional language in the proposal?

In addition to setting lot area coverage for main buildings at 18%, the proposed Ordinance also specifies the parts of a house that are included in the calculation of how much of the lot the house covers – such as chimneys, porches, decks, steps and stoops, and bay windows. The Town has been including these parts of a house consistently since 1992 to calculate the "minimum combined setback" and would use exactly the same factors under the proposed Ordinance. There will be no difference under the proposed Ordinance in how the size of the house is calculated or what parts are included. The only difference is that those will now be spelled out in the Ordinance for the sake of clarity.

Do the factors that the Town uses to calculate lot coverage differ from those used by the County?

They do in some respects; with regard to the construction that is at issue in the current litigation (a covered porch), however, it does not result in a different outcome because the County defines "building coverage" as "the area of a lot that is occupied by the main and accessory buildings, including covered decks, porches, and steps." The County also defines "Percentage of lot coverage" (Article 59-A) as "The percentage of 'net lot area' which may be covered by buildings including covered porches and accessory buildings. See 'ground area of a building.'" In turn, the County defines "Ground Area of a Building" as "The number of square feet of horizontal surface covered by a building, including covered porches and accessory buildings. All measurements shall be made between exterior faces of walls, foundations, piers or other means of support."

The proposed Ordinance codifies the Town's long-standing practice in a way that makes clear the standards that have been consistently employed in calculating lot coverage. The purpose of the codification is to set out in writing the Town standards so that everyone is aware of those elements that are included in the calculation. As with the basic open space provision, the proposed Ordinance represents no change from the existing status. To the extent that consideration of changes in the practice may be warranted, the elements of the calculation can be revisited in the context of a broad-gauge look at the law as a whole. (See discussion below.)

What is the background to the current "setback" requirements?

In the late-1980's and early 1990's, in response to concern over "infill" development in Garrett Park, the Town explored ways to preserve the look and historic appearance of Town, particularly with respect to maintaining open space. Before a proposed law was drafted, information was

gathered to provide a factual context for consideration of possible ways to preserve open space. This information included the average amount of lot covered by existing houses in Garrett Park (approximately 12-13% lot coverage), as well as similar information for front, side and rear yards. Using this factual context, the Town considered and discussed the range of options open to it to preserve open space. There was an extensive public participation process (see next item) and the law passed a Town-wide referendum subsequent to its adoption. The 1992 ordinance that resulted from this process specified minimum "setbacks" that construction on new or existing houses are required to meet in order to preserve open space. "Setbacks" are the minimum distances that a house must be located from the lot lines: front, side, and rear. The 1992 ordinance also specified that the "minimum combined setback" should be at least 82%...that is, the open space left on the lot after constructing (or adding to) a house that meets the other (front, side, rear) setbacks.

What is the "minimum combined setback"?

The "minimum combined setback" is a requirement that applies in addition to the required side, rear, and front yard setbacks. After each of those setbacks is met (that is, the main house is at least 10' from the side lot line, 30' from the front, and so on), the *combined* setbacks must provide at least 82% open space on the lot. As a practical matter, in a town like Garrett Park where both lots and houses vary in dimension and shape, the method for most accurately and easily determining "minimum combined setback" is to calculate the amount of land covered by the house and, if it is 18% or less, the requirement for 82% open space has been met.

Why was that method chosen to preserve open space in Garrett Park?

In 1992 Garrett Park did not have express authority to regulate lot coverage, as such. The Town chose to regulate open space through the concept of "minimum combined setback" because the State of Maryland had granted municipalities authority to regulate building setbacks. Therefore, in order to preserve open space in Garrett Park – and reflecting the fact that, on average, lot coverage in Town was in the range of 12-13% – the Town chose to require a "minimum combined setback" of 82% and defined "combined minimum setback" as the "total of the combined setback areas for main buildings, being the sum of front, rear, and side yards."

Isn't that still valid?

The "minimum combined setback" has served the Town well for 16 years and there are reasonable arguments in support of its soundness. But because the concept was innovative at the time it could be ruled invalid by a judge, and it would be expensive and time-consuming for the Town to research, brief and argue the issue as a matter of law. Because the State granted additional authority to the Town in 2006, it is also completely unnecessary to incur that expense. The Town now has explicit legal authority to directly regulate lot coverage. Thus, the proposed

Ordinance will restate the coverage standard that the Town has employed for 16 years – in simpler language and under express authority to set such a standard.

What is the 20% lot occupancy standard?

The Garrett Park standard for *main buildings* (houses) is 18%. The County standard for main buildings *and* accessory buildings (such as garden houses, detached garages) is 20%. Thus, in Garrett Park, a house can cover up to 18% of the lot and other, separate structures can cover an additional 2%, for a total lot occupancy of 20%. A single house, however, cannot exceed the Garrett Park standard of 18% lot occupancy (currently expressed as 82% open space) as a matter of right (that is, without a variance).

Some people think that the 18% limit is too stringent; others think it is too generous. Why not increase or decrease the percentage of permitted lot occupancy?

The current standards can be reviewed and changes considered. In Garrett Park, however, considering changes to the standards has always been a lengthier, participatory, and deliberate process. The original 1992 enactment and the three major amendments to the law (providing a more liberal rule for small lots, an exception for certain porches, and a change to the calculation of the established lot line for front yard setbacks) were undertaken only after factual data had been gathered to better inform both the drafting of the ordinance and public policy discussion. The original law and some of the amendments were also the subject of Citizens Association meetings, informal workshops, and other steps.

There are reasons to consider reviewing elements of the current law – shifting demographics in Town, changed requirements at the County level, and other factors. Questions to consider might include whether the current 18% lot coverage standard still reflects an appropriate benchmark for preservation of open space in Garrett Park. Could evolving needs of Town residents be met by changes targeted to those needs (addressing, for example, porches and decks) rather than across-the-board changes in permitted lot coverage? Should the standards for grant of a variance (specifically, the consideration of upper limit for permissible lot coverage) be reassessed?

Proposed changes in the standards set by the original law should clearly be the subject of the same fact-gathering, participatory and deliberative process that marked the initial enactment and subsequent changes. The Town has already set about gathering some of the data necessary to provide a useful context for informed discussion. The Town will also work with the Citizens Association to ensure that adequate opportunities will be afforded for resident participation – including, we suggest, meetings and workshops at a variety of times and in a range of formats.

Why not wait until that larger assessment is done to consider this proposal?

The proposed Ordinance is not a *change* in the *standard* that applies in Town; it is a restatement of the same open-space requirement in different words – words that reflect the express authority the Town now has to set lot coverage standards. The prompt enactment of this law will maintain the viability of the Town's long-standing open space ordinance and will possibly save the Town a good deal of money in legal fees.

Why not just adopt the Montgomery County standards for open space, as some residents have suggested?

Why should the Town adopt Montgomery County standards when the Town has the authority to enact its own laws reflecting its own values? The 1992 ordinance and subsequent changes were put in place after lengthy public debate. Absent additional debate and consideration, the existing ordinance should not be abandoned.

How is this proposal related to the law suit against the Town?

The current lawsuit against the Town asks the court to invalidate *all* of Sections 402 and 403 of the Town Code – Section 402 governs all setbacks, and Section 403 sets out requirements for obtaining a variance. That is, the law suit argues that Garrett Park failed to follow proper procedures in enacting those provisions and Sections 402 and 403 should therefore be voided by the court; the Town would thus not have its own open space ordinance in force until a new ordinance is enacted. The Town argues that it followed the required procedures and therefore had the authority to enact the two sections. The issue has not yet been decided by the judge. (Our Town Administrator, Ted Pratt, has copies of all pleadings, and residents can review them in the Town Office.)

The law suit does not expressly challenge the Town's authority to regulate open space through the "minimum combined setback" requirement. During the course of the proceedings, the judge asked about the "minimum combined setback" requirement and specifically the Town's authority to regulate lot coverage through this mechanism under State law that existed at the time it was enacted. That is the key issue that the judge requested the parties to brief and argue in September. The Town has asked the judge for a continuance in the briefing schedule so that the proposed ordinance can be considered.

As stated above, State law changed in 2006, and now the Town clearly has the authority to preserve open space by setting maximum lot occupancy. The Council is therefore considering amending the existing law to meet the question that was raised by the judge on his own initiative, not to prevent the plaintiffs in the current law suit from building a porch. The proposed

Ordinance does not change the fundamental requirement of the Town's open space law. If a house has a combined minimum setback of 82% or more, then it will also have lot coverage of 18% or less; in either case, it complies with the Garrett Park standard.

Why doesn't the Town just drop the law suit?

The Town, through its elected representatives, has an obligation to support and protect the laws which it has adopted, and which in this case provide open space protections consistent with the desires of Town residents. Under the US legal system, once a law suit has been filed with the court, only the plaintiff (the side that filed the suit, in this case the Martins), can request the court for permission to withdraw the law suit. A defendant (in this case the Town) cannot request a withdrawal. Under the oath taken by the Mayor and Council members when we were sworn in, it is our responsibility to defend the Town's laws.